

1-1 By: Callegari, Macias (Senate Sponsor - Jackson) H.B. No. 447
1-2 (In the Senate - Received from the House April 23, 2007;
1-3 April 24, 2007, read first time and referred to Committee on
1-4 Government Organization; May 11, 2007, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 5,
1-6 Nays 0; May 11, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 447 By: Jackson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to contracts by governmental entities and related
1-11 professional services, to public works performance and payment
1-12 bonds, and to certain regulations of local authorities.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

1-15 SECTION 1.01. Section 2253.021, Government Code, is amended
1-16 by adding Subsection (h) to read as follows:

1-17 (h) A reverse auction procedure may not be used to obtain
1-18 services related to a public work contract for which a bond is
1-19 required under this section. In this subsection, "reverse auction
1-20 procedure" has the meaning assigned by Section 2155.062 or a
1-21 procedure similar to that described by Section 2155.062.

1-22 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

1-23 SECTION 2.01. Sections 44.031(a) and (f), Education Code,
1-24 are amended to read as follows:

1-25 (a) Except as provided by this subchapter, all school
1-26 district contracts for the purchase of goods and services, except
1-27 contracts for the purchase of produce or vehicle fuel, valued at
1-28 \$25,000 or more in the aggregate for each 12-month period shall be
1-29 made by the method, of the following methods, that provides the best
1-30 value for the district:

1-31 (1) competitive bidding for services other than
1-32 construction services;

1-33 (2) competitive sealed proposals for services other
1-34 than construction services;

1-35 (3) a request for proposals, for services other than
1-36 construction services;

1-37 (4) a catalogue purchase as provided by Subchapter B,
1-38 Chapter 2157, Government Code;

1-39 (5) an interlocal contract;

1-40 (6) a method provided by Chapter 2264, Government
1-41 Code;

1-42 (7) ~~[a design/build contract;~~

1-43 ~~[(7) a contract to construct, rehabilitate, alter, or~~
1-44 ~~repair facilities that involves using a construction manager;~~

1-45 ~~[(8) a job order contract for the minor construction,~~
1-46 ~~repair, rehabilitation, or alteration of a facility;~~

1-47 ~~[(9)]~~ the reverse auction procedure as defined by
1-48 Section 2155.062(d), Government Code; or

1-49 (8) ~~[(10)]~~ the formation of a political subdivision
1-50 corporation under Section 304.001, Local Government Code.

1-51 (f) This section does not apply to a contract for
1-52 professional services rendered, including services of an
1-53 architect, attorney, engineer, or fiscal agent. A school district
1-54 may, at its option, contract for professional services rendered by
1-55 a financial consultant or a technology consultant in the manner
1-56 provided by Section 2254.003, Government Code, in lieu of the
1-57 methods provided by this section.

1-58 SECTION 2.02. Subchapter B, Chapter 44, Education Code, is
1-59 amended by adding Section 44.0351 to read as follows:

1-60 Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the
1-61 extent prohibited by other law and to the extent consistent with
1-62 this subchapter, a school district may use competitive bidding to
1-63 select a vendor as authorized by Section 44.031(a)(1).

2-1 (b) Except as provided by this subsection, Subchapter B,
 2-2 Chapter 271, Local Government Code, does not apply to a competitive
 2-3 bidding process under this subchapter. Sections 271.026,
 2-4 271.027(a), and 271.0275, Local Government Code, apply to a
 2-5 competitive bidding process under this subchapter.

2-6 (c) A school district shall award a competitively bid
 2-7 contract at the bid amount to the bidder offering the best value for
 2-8 the district. In determining the best value for the district, the
 2-9 district is not restricted to considering price alone, but may
 2-10 consider any other factors stated in the selection criteria. The
 2-11 selection criteria may include the factors listed in Section
 2-12 44.031(b).

2-13 SECTION 2.03. Subchapter B, Chapter 44, Education Code, is
 2-14 amended by adding Section 44.0361 to read as follows:

2-15 Sec. 44.0361. COMPETITIVE SEALED PROPOSALS. (a) In
 2-16 selecting a vendor through competitive sealed proposals as
 2-17 authorized by Section 44.031(a)(2), a school district shall follow
 2-18 the procedures prescribed by this section.

2-19 (b) The district shall prepare a request for competitive
 2-20 sealed proposals that includes information that vendors may require
 2-21 to respond to the request. The district shall state in the request
 2-22 for proposals the selection criteria that will be used in selecting
 2-23 the successful offeror.

2-24 (c) The district shall receive, publicly open, and read
 2-25 aloud the names of the offerors and, if any are required to be
 2-26 stated, all prices stated in each proposal. Not later than the 45th
 2-27 day after the date on which the proposals are opened, the district
 2-28 shall evaluate and rank each proposal submitted in relation to the
 2-29 published selection criteria.

2-30 (d) The district shall select the offeror that offers the
 2-31 best value for the district based on the published selection
 2-32 criteria and on its ranking evaluation. The district shall first
 2-33 attempt to negotiate with the selected offeror a contract. The
 2-34 district may discuss with the selected offeror options for a scope
 2-35 or time modification and any price change associated with the
 2-36 modification. If the district is unable to negotiate a contract
 2-37 with the selected offeror, the district shall, formally and in
 2-38 writing, end negotiations with that offeror and proceed to the next
 2-39 offeror in the order of the selection ranking until a contract is
 2-40 reached or all proposals are rejected.

2-41 (e) In determining the best value for the district, the
 2-42 district is not restricted to considering price alone, but may
 2-43 consider any other factors stated in the selection criteria.

2-44 SECTION 2.04. Subchapter B, Chapter 44, Education Code, is
 2-45 amended by adding Section 44.0411 to read as follows:

2-46 Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or
 2-47 specifications is necessary after the performance of a contract is
 2-48 begun or if it is necessary to decrease or increase the quantity of
 2-49 work to be performed or of materials, equipment, or supplies to be
 2-50 furnished, the district may approve change orders making the
 2-51 changes.

2-52 (b) The total contract price may not be increased because of
 2-53 the changes unless additional money for increased costs is approved
 2-54 for that purpose from available money or is provided for by the
 2-55 authorization of the issuance of time warrants.

2-56 (c) The district may grant general authority to an
 2-57 administrative official to approve the change orders.

2-58 (d) A contract with an original contract price of \$1 million
 2-59 or more may not be increased under this section by more than 25
 2-60 percent. If a change order for a contract with an original contract
 2-61 price of less than \$1 million increases the contract amount to \$1
 2-62 million or more, subsequent change orders may not increase the
 2-63 revised contract amount by more than 25 percent.

2-64 SECTION 2.05. Subchapter A, Chapter 46, Education Code, is
 2-65 amended by adding Section 46.0111 to read as follows:

2-66 Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN,
 2-67 CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL
 2-68 FACILITY. (a) In this section:

2-69 (1) "Net proceeds" means the difference between the

3-1 amount recovered by or on behalf of a school district in an action,
 3-2 by settlement or otherwise, and the legal fees and litigation costs
 3-3 incurred by the district in prosecuting the action.

3-4 (2) "State's share" means an amount equal to the
 3-5 district's net proceeds from the recovery multiplied by a
 3-6 percentage determined by dividing the amount of state assistance
 3-7 under this subchapter used to pay the principal of and interest on
 3-8 bonds issued in connection with the instructional facility that is
 3-9 the subject of the action by the total amount of principal and
 3-10 interest paid on the bonds as of the date of the judgment or
 3-11 settlement.

3-12 (b) A school district that brings an action for recovery of
 3-13 damages for the defective design, construction, renovation, or
 3-14 improvement of an instructional facility financed by bonds for
 3-15 which the district receives state assistance under this subchapter
 3-16 shall provide the commissioner with written notice of the action.

3-17 (c) The commissioner may join in the action on behalf of the
 3-18 state to protect the state's share in the action.

3-19 (d) A school district shall use the net proceeds from an
 3-20 action brought by the district for the defective design,
 3-21 construction, renovation, or improvement of an instructional
 3-22 facility financed by bonds for which the district receives state
 3-23 assistance under this subchapter to repair the defective design,
 3-24 construction, renovation, or improvement of the instructional
 3-25 facility on which the action is brought or to replace the facility.
 3-26 Section 46.008 applies to the repair.

3-27 (e) The state's share is state property. The school district
 3-28 shall send to the comptroller any portion of the state's share not
 3-29 used by the school district to repair the defective design,
 3-30 construction, renovation, or improvement of the instructional
 3-31 facility on which the action is brought or to replace the facility.
 3-32 Section 42.258 applies to the state's share under this subsection.

3-33 SECTION 2.06. Section 791.011, Government Code, is amended
 3-34 by amending Subsection (e) and adding Subsections (h) and (i) to
 3-35 read as follows:

3-36 (e) An interlocal contractual payment must be in an amount
 3-37 that fairly compensates the performing party for the services or
 3-38 functions performed under the contract. This subsection does not
 3-39 prohibit a local government from being reimbursed for its expenses
 3-40 or from sharing in the profits or revenue of the performing party if
 3-41 the reimbursement or sharing assists in the management of a local
 3-42 government.

3-43 (h) An interlocal contract may not be used to purchase
 3-44 engineering or architectural services unless the services are in
 3-45 connection with the design or construction of a specific facility
 3-46 to be jointly owned, used, or financed by the parties to the
 3-47 contract.

3-48 (i) An interlocal contract may not be used to purchase
 3-49 construction services unless the services are in connection with
 3-50 the design or construction of a specific facility to be jointly
 3-51 owned, used, or financed by the parties to the contract or:

3-52 (1) the services are in connection with a job order
 3-53 contract;

3-54 (2) the governing body of the governmental entity for
 3-55 whom the work will ultimately be performed approves the purchase in
 3-56 open session;

3-57 (3) public notice is provided in a manner consistent
 3-58 with a direct contract for job order contracting services; and

3-59 (4) work orders under the contract comply with Section
 3-60 2264.353.

3-61 SECTION 2.07. Section 2166.2525, Government Code, is
 3-62 amended to read as follows:

3-63 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The
 3-64 [commission shall adopt rules that determine the circumstances for
 3-65 use of each] method of contracting allowed under this subchapter
 3-66 for design and construction services is any method provided by
 3-67 Chapter 2264. [In developing the rules, the commission shall
 3-68 solicit advice and comment from design and construction
 3-69 professionals regarding the criteria the commission will use in

determining which contracting method is best suited for a project.]
SECTION 2.08. Section 2254.003(b), Government Code, is amended to read as follows:

(b) The professional fees under the contract [~~+~~
[~~(1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and~~
[~~(2)~~] may not exceed any maximum provided by law.

SECTION 2.09. Subchapter A, Chapter 2254, Government Code, is amended by adding Section 2254.007 to read as follows:

Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This subchapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date on which the contract is awarded.

(b) This section does not apply to enforcement of a contract entered into by a state agency. In this subsection, "state agency" has the meaning assigned by Section 2151.002. The term includes the Texas Building and Procurement Commission.

SECTION 2.10. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code.
(2) "Engineer" means an individual licensed as an engineer under Chapter 1001, Occupations Code.

(3) "Facility" means an improvement to real property.
(4) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

(5) "General contractor" means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of a facility at the contracted price.

(6) "Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS. This chapter applies to a public work contract made by a governmental entity or quasi-governmental entity authorized by state law to make a public work contract, including:

(1) a state agency as defined by Section 2151.002, including the Texas Building and Procurement Commission;

(2) a local government, including:
(A) a county;
(B) a municipality;
(C) a school district;
(D) any other special district or authority, including a hospital district, a defense base development authority established under Chapter 379B, Local Government Code, and a conservation and reclamation district, including a river authority or any other type of water district; and
(E) any other political subdivision of this state;

(3) a public junior college as defined by Section 61.003, Education Code;

(4) any entity owned by a municipality; and
(5) any other entity that owns or operates a facility for the benefit of a municipality or county.

Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Except as provided by this section, this chapter prevails over any other law relating to a public work contract.

(b) This chapter does not prevail over a conflicting

5-1 provision in a law relating to contracting with a historically
 5-2 underutilized business.

5-3 (c) This chapter does not prevail over a conflicting
 5-4 provision that requires the use of competitive bidding in:

- 5-5 (1) a charter of a home-rule municipality; or
- 5-6 (2) a rule of a county, a defense base development
 5-7 authority, or a conservation and reclamation district, including a
 5-8 river authority or any other type of water district.

5-9 (d) The governing body of a governmental entity to which
 5-10 Subsection (c) applies may elect to have this chapter overrule the
 5-11 conflicting provision in the charter or rule.

5-12 (e) This chapter does not prevail over a conflicting
 5-13 provision in an ordinance or resolution passed by the governing
 5-14 body of a municipally owned electric utility in a procedure
 5-15 described by Section 252.022(c), Local Government Code, that:

- 5-16 (1) requires the use of competitive bidding or
 5-17 competitive sealed proposals; or
- 5-18 (2) prescribes a design-build procurement procedure
 5-19 that conflicts with this chapter.

5-20 Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF
 5-21 TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

- 5-22 (1) a contract entered into by the Texas Department of
 5-23 Transportation; or
- 5-24 (2) a project that receives money from a state or
 5-25 federal highway fund.

5-26 Sec. 2264.005. APPLICABILITY: INSTITUTIONS OF HIGHER
 5-27 EDUCATION. (a) In this section, "institution of higher
 5-28 education," "public junior college," and "university system" have
 5-29 the meanings assigned by Section 61.003, Education Code.

5-30 (b) This chapter applies to a public junior college but does
 5-31 not apply to:

- 5-32 (1) any other institution of higher education; or
- 5-33 (2) a university system.

5-34 [Sections 2264.006-2264.050 reserved for expansion]

5-35 SUBCHAPTER B. GENERAL POWERS AND DUTIES

5-36 Sec. 2264.051. RULES. A governmental entity may adopt
 5-37 rules as necessary to implement this chapter.

5-38 Sec. 2264.052. NOTICE REQUIREMENTS. (a) A governmental
 5-39 entity shall advertise or publish notice of requests for bids,
 5-40 proposals, or qualifications in a manner prescribed by law.

5-41 (b) For a contract entered into by a governmental entity
 5-42 under a method provided by this chapter, the governmental entity
 5-43 shall publish notice of the time and place the bid or proposal or
 5-44 request for qualifications will be received and opened in a manner
 5-45 prescribed by law.

5-46 Sec. 2264.053. DELEGATION OF AUTHORITY. (a) The governing
 5-47 body of a governmental entity may delegate its authority under this
 5-48 chapter regarding an action authorized or required by this chapter
 5-49 to a designated representative, committee, or other person.

5-50 (b) The governmental entity shall provide notice of the
 5-51 delegation, the limits of the delegation, and the name or title of
 5-52 each person designated under Subsection (a) by rule or in the
 5-53 request for bids, proposals, or qualifications or in an addendum to
 5-54 the request.

5-55 Sec. 2264.054. RIGHT TO WORK. (a) This section applies to
 5-56 a governmental entity when the governmental entity is engaged in:

- 5-57 (1) procuring goods or services under this chapter;
- 5-58 (2) awarding a contract under this chapter; or
- 5-59 (3) overseeing procurement or construction for a
 5-60 public work or public improvement under this chapter.

5-61 (b) In engaging in an activity to which this section
 5-62 applies, a governmental entity:

5-63 (1) may not consider whether a person is a member of or
 5-64 has another relationship with any organization; and

5-65 (2) shall ensure that its bid specifications and any
 5-66 subsequent contract or other agreement do not deny or diminish the
 5-67 right of a person to work because of the person's membership or
 5-68 other relationship status with respect to an organization.

5-69 Sec. 2264.055. CRITERIA TO CONSIDER. (a) In determining

6-1 the award of a contract under this chapter, the governmental entity
 6-2 may consider:

- 6-3 (1) the price;
 6-4 (2) the offeror's experience and reputation;
 6-5 (3) the quality of the offeror's goods or services;
 6-6 (4) the impact on the ability of the governmental
 6-7 entity to comply with rules relating to historically underutilized
 6-8 businesses;
 6-9 (5) the offeror's safety record;
 6-10 (6) the offeror's proposed personnel;
 6-11 (7) whether the offeror's financial capability is
 6-12 appropriate to the size and scope of the project; and
 6-13 (8) any other relevant factor specifically listed in
 6-14 the request for bids, proposals, or qualifications.

6-15 (b) In determining the award of a contract under this
 6-16 chapter, the governmental entity shall:

- 6-17 (1) consider and apply any existing laws, including
 6-18 any criteria, related to historically underutilized businesses;
 6-19 and
 6-20 (2) consider and apply any existing laws, rules, or
 6-21 applicable municipal charters, including laws applicable to local
 6-22 governments, related to the use of women, minority, small, or
 6-23 disadvantaged businesses.

6-24 Sec. 2264.056. USING METHOD OTHER THAN COMPETITIVE BIDDING
 6-25 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a)
 6-26 The governing body of a governmental entity that considers a
 6-27 construction contract using a method authorized by this chapter
 6-28 other than competitive bidding must, before advertising, determine
 6-29 which method provides the best value for the governmental entity.

6-30 (b) The governmental entity shall base its selection among
 6-31 offerors on applicable criteria listed for the particular method
 6-32 used. The governmental entity shall publish in the request for
 6-33 proposals or qualifications the criteria that will be used to
 6-34 evaluate the offerors, and the applicable weighted value for each
 6-35 criterion.

6-36 (c) The governmental entity shall document the basis of its
 6-37 selection and shall make the evaluations public not later than the
 6-38 seventh day after the date the contract is awarded.

6-39 Sec. 2264.057. ARCHITECT OR ENGINEER SERVICES. (a) An
 6-40 architect or engineer required to be selected or designated under
 6-41 this chapter has full responsibility for complying with Chapter
 6-42 1051 or 1001, Occupations Code, as applicable.

6-43 (b) If the selected or designated architect or engineer is
 6-44 not a full-time employee of the governmental entity, the
 6-45 governmental entity shall select the architect or engineer on the
 6-46 basis of demonstrated competence and qualifications as provided by
 6-47 Section 2254.004.

6-48 Sec. 2264.058. USE OF OTHER PROFESSIONAL SERVICES. (a)
 6-49 Independently of the contractor, construction manager-at-risk, or
 6-50 design-build firm, the governmental entity shall provide or
 6-51 contract for the construction materials engineering, testing, and
 6-52 inspection services and the verification testing services
 6-53 necessary for acceptance of the facility by the governmental
 6-54 entity.

6-55 (b) The governmental entity shall select the services for
 6-56 which it contracts under this section in accordance with Section
 6-57 2254.004.

6-58 Sec. 2264.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS
 6-59 REQUIRED. A person who submits a bid, proposal, or qualification to
 6-60 a governmental entity shall seal it before delivery.

6-61 [Sections 2264.060-2264.100 reserved for expansion]

6-62 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

6-63 Sec. 2264.101. CONTRACTS FOR FACILITIES: COMPETITIVE
 6-64 BIDDING. (a) In this chapter, "competitive bidding" is a
 6-65 procurement method by which a governmental entity contracts with a
 6-66 contractor for the construction, alteration, rehabilitation, or
 6-67 repair of a facility by awarding the contract to the lowest
 6-68 responsible bidder.

6-69 (b) Except as otherwise provided by this chapter or other

7-1 law, a governmental entity may contract for the construction,
 7-2 alteration, rehabilitation, or repair of a facility only after the
 7-3 entity advertises for bids for the contract in a manner prescribed
 7-4 by law, receives competitive bids, and awards the contract to the
 7-5 lowest responsible bidder.

7-6 Sec. 2264.102. USE OF ARCHITECT OR ENGINEER. The
 7-7 governmental entity shall select or designate an architect or
 7-8 engineer in accordance with Chapter 1051 or 1001, Occupations Code,
 7-9 as applicable, to prepare the construction documents required for a
 7-10 project to be awarded by competitive bidding.

7-11 Sec. 2264.103. PREPARATION OF REQUEST. The governmental
 7-12 entity shall prepare a request for competitive bids that includes
 7-13 construction documents, estimated budget, project scope, estimated
 7-14 project completion date, and other information that a contractor
 7-15 may require to submit a bid.

7-16 Sec. 2264.104. EVALUATION OF OFFERORS. The governmental
 7-17 entity shall receive, publicly open, and read aloud the names of the
 7-18 offerors and their bids.

7-19 Sec. 2264.105. SELECTION OF OFFEROR. Not later than the
 7-20 seventh day after the date the contract is awarded, the
 7-21 governmental entity shall document the basis of its selection and
 7-22 shall make the evaluations public.

7-23 Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING
 7-24 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise
 7-25 specifically provided by this section, Subchapter B, Chapter 271,
 7-26 Local Government Code, does not apply to a competitive bidding
 7-27 process conducted under this chapter. Sections 271.026,
 7-28 271.027(a), and 271.0275, Local Government Code, apply to a
 7-29 competitive bidding process conducted under this chapter by a
 7-30 governmental entity as defined by Section 271.021, Local Government
 7-31 Code.

7-32 [Sections 2264.107-2264.150 reserved for expansion]

7-33 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

7-34 Sec. 2264.151. CONTRACTS FOR FACILITIES: COMPETITIVE
 7-35 SEALED PROPOSALS. (a) In this chapter, "competitive sealed
 7-36 proposals" is a procurement method by which a governmental entity
 7-37 requests proposals, ranks the offerors, negotiates as prescribed,
 7-38 and then contracts with a general contractor for the construction,
 7-39 rehabilitation, alteration, or repair of a facility.

7-40 (b) In selecting a contractor through competitive sealed
 7-41 proposals, a governmental entity shall follow the procedures
 7-42 provided by this subchapter.

7-43 Sec. 2264.152. USE OF ARCHITECT OR ENGINEER. The
 7-44 governmental entity shall select or designate an architect or
 7-45 engineer to prepare construction documents for the project.

7-46 Sec. 2264.153. PREPARATION OF REQUEST. The governmental
 7-47 entity shall prepare a request for competitive sealed proposals
 7-48 that includes construction documents, selection criteria and the
 7-49 weighted value for each criterion, estimated budget, project scope,
 7-50 estimated project completion date, and other information that a
 7-51 contractor may require to respond to the request.

7-52 Sec. 2264.154. EVALUATION OF OFFERORS. (a) The
 7-53 governmental entity shall receive, publicly open, and read aloud
 7-54 the names of the offerors and any monetary proposals made by the
 7-55 offerors.

7-56 (b) Not later than the 45th day after the date of opening the
 7-57 proposals, the governmental entity shall evaluate and rank each
 7-58 proposal submitted in relation to the published selection criteria.

7-59 Sec. 2264.155. SELECTION OF OFFEROR. (a) The governmental
 7-60 entity shall select the offeror that submits the proposal that
 7-61 offers the best value for the governmental entity based on:

7-62 (1) the selection criteria in the request for proposal
 7-63 and the weighted value for those criteria in the request for
 7-64 proposal; and

7-65 (2) its ranking evaluation.

7-66 (b) The governmental entity shall first attempt to
 7-67 negotiate a contract with the selected offeror. The governmental
 7-68 entity and its architect or engineer may discuss with the selected
 7-69 offeror options for a scope or time modification and any price

8-1 change associated with the modification.

8-2 (c) If the governmental entity is unable to negotiate a
 8-3 contract with the selected offeror, the governmental entity shall,
 8-4 formally and in writing, end negotiations with that offeror and
 8-5 proceed to the next offeror in the order of the selection ranking
 8-6 until a contract is reached or all proposals are rejected.

8-7 [Sections 2264.156-2264.200 reserved for expansion]

8-8 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

8-9 Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION
 8-10 MANAGER-AGENT. (a) In this chapter, the "construction
 8-11 manager-agent method" is a delivery method by which a governmental
 8-12 entity contracts with a construction manager-agent, instead of a
 8-13 general contractor, to provide administrative services and to
 8-14 manage multiple contracts with various construction prime
 8-15 contractors.

8-16 (b) A construction manager-agent is a sole proprietorship,
 8-17 partnership, corporation, or other legal entity that serves as the
 8-18 agent for the governmental entity by providing construction
 8-19 administration and management services described by Subsection (a)
 8-20 for the construction, rehabilitation, alteration, or repair of a
 8-21 facility.

8-22 (c) A governmental entity may retain a construction
 8-23 manager-agent for assistance in the construction, rehabilitation,
 8-24 alteration, or repair of a facility only as provided by this
 8-25 subchapter.

8-26 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION
 8-27 MANAGER-AGENT. The contract between the governmental entity and
 8-28 the construction manager-agent may require the construction
 8-29 manager-agent to provide:

8-30 (1) administrative personnel;

8-31 (2) equipment necessary to perform duties under this
 8-32 subchapter;

8-33 (3) on-site management; and

8-34 (4) other services specified in the contract.

8-35 Sec. 2264.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A
 8-36 construction manager-agent may not:

8-37 (1) self-perform any aspect of the construction,
 8-38 rehabilitation, alteration, or repair of the facility;

8-39 (2) be a party to a construction subcontract for the
 8-40 construction, rehabilitation, alteration, or repair of the
 8-41 facility; or

8-42 (3) provide project bonding for the construction,
 8-43 rehabilitation, alteration, or repair of the facility.

8-44 Sec. 2264.204. FIDUCIARY CAPACITY OF CONSTRUCTION
 8-45 MANAGER-AGENT. A construction manager-agent represents the
 8-46 governmental entity in a fiduciary capacity.

8-47 Sec. 2264.205. USE OF ARCHITECT OR ENGINEER. (a) On or
 8-48 before the selection of a construction manager-agent, the
 8-49 governmental entity shall select or designate an architect or
 8-50 engineer to prepare the construction documents for the project.

8-51 (b) The governmental entity's architect or engineer may not
 8-52 serve, alone or in combination with another person, as the
 8-53 construction manager-agent unless the architect or engineer is
 8-54 hired to serve as the construction manager-agent under a separate
 8-55 or concurrent selection process conducted in accordance with this
 8-56 subchapter. This subsection does not prohibit the governmental
 8-57 entity's architect or engineer from providing customary
 8-58 construction phase services under the architect's or engineer's
 8-59 original professional service agreement in accordance with
 8-60 applicable licensing laws.

8-61 (c) To the extent that the construction manager-agent's
 8-62 services are defined as part of the practice of architecture or
 8-63 engineering under Chapter 1051 or 1001, Occupations Code, those
 8-64 services must be conducted by a person licensed under the
 8-65 applicable chapter.

8-66 Sec. 2264.206. SELECTION OF CONTRACTORS. A governmental
 8-67 entity using the construction manager-agent method shall procure,
 8-68 in accordance with applicable law and in any manner authorized by
 8-69 this chapter, a general contractor or trade contractors who will

9-1 serve as the prime contractor for their specific portion of the
 9-2 work.

9-3 Sec. 2264.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A
 9-4 governmental entity shall select a construction manager-agent on
 9-5 the basis of demonstrated competence and qualifications in the same
 9-6 manner that an architect or engineer is selected under Section
 9-7 2254.004.

9-8 Sec. 2264.208. INSURANCE. A construction manager-agent
 9-9 selected under this subchapter shall maintain professional
 9-10 liability or errors and omissions insurance in the amount of at
 9-11 least \$1 million for each occurrence.

9-12 [Sections 2264.209-2264.250 reserved for expansion]

9-13 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

9-14 Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION
 9-15 MANAGER-AT-RISK. (a) In this chapter, the "construction
 9-16 manager-at-risk method" is a delivery method by which a
 9-17 governmental entity contracts with an architect or engineer for
 9-18 design and construction phase services and contracts separately
 9-19 with a construction manager-at-risk to serve as the general
 9-20 contractor and to provide consultation during the design and
 9-21 construction, rehabilitation, alteration, or repair of a facility.

9-22 (b) A construction manager-at-risk is a sole
 9-23 proprietorship, partnership, corporation, or other legal entity
 9-24 that assumes the risk for construction, rehabilitation,
 9-25 alteration, or repair of a facility at the contracted price as a
 9-26 general contractor and provides consultation to the governmental
 9-27 entity regarding construction during and after the design of the
 9-28 facility. The contracted price may be a guaranteed maximum price.

9-29 (c) A governmental entity may use the construction
 9-30 manager-at-risk method in selecting a general contractor for the
 9-31 construction, rehabilitation, alteration, or repair of a facility
 9-32 only as provided by this subchapter.

9-33 Sec. 2264.252. USE OF ARCHITECT OR ENGINEER. (a) On or
 9-34 before the selection of a construction manager-at-risk, the
 9-35 governmental entity shall select or designate an architect or
 9-36 engineer to prepare the construction documents for the project.

9-37 (b) The governmental entity's architect or engineer for a
 9-38 project may not serve, alone or in combination with another person,
 9-39 as the construction manager-at-risk unless the architect or
 9-40 engineer is hired to serve as the construction manager-at-risk
 9-41 under a separate or concurrent selection process conducted in
 9-42 accordance with this subchapter. This subsection does not prohibit
 9-43 the governmental entity's architect or engineer from providing
 9-44 customary construction phase services under the architect's or
 9-45 engineer's original professional service agreement in accordance
 9-46 with applicable licensing laws.

9-47 Sec. 2264.253. SELECTION PROCESS. (a) The governmental
 9-48 entity shall select the construction manager-at-risk in a one-step
 9-49 or two-step process.

9-50 (b) The governmental entity shall prepare a single request
 9-51 for proposals, in the case of a one-step process, and an initial
 9-52 request for qualifications, in the case of a two-step process, that
 9-53 includes:

9-54 (1) a statement as to whether the selection process is
 9-55 a one-step or two-step process;

9-56 (2) general information on the project site, project
 9-57 scope, schedule, selection criteria and the weighted value for each
 9-58 criterion, and estimated budget and the time and place for receipt
 9-59 of the proposals or qualifications; and

9-60 (3) other information that may assist the governmental
 9-61 entity in its selection of a construction manager-at-risk.

9-62 (c) The governmental entity shall state the selection
 9-63 criteria in the request for proposals or qualifications.

9-64 (d) If a one-step process is used, the governmental entity
 9-65 may request, as part of the offeror's proposal, proposed fees and
 9-66 prices for fulfilling the general conditions.

9-67 (e) If a two-step process is used, the governmental entity
 9-68 may not request fees or prices in step one. In step two, the
 9-69 governmental entity may request that five or fewer offerors,

10-1 selected solely on the basis of qualifications, provide additional
 10-2 information, including the construction manager-at-risk's proposed
 10-3 fee and prices for fulfilling the general conditions.

10-4 (f) At each step, the governmental entity shall receive,
 10-5 publicly open, and read aloud the names of the offerors. At the
 10-6 appropriate step, the governmental entity shall also read aloud the
 10-7 fees and prices, if any, stated in each proposal as the proposal is
 10-8 opened.

10-9 (g) Not later than the 45th day after the date of opening the
 10-10 final proposals, the governmental entity shall evaluate and rank
 10-11 each proposal submitted in relation to the criteria set forth in the
 10-12 request for proposals.

10-13 Sec. 2264.254. SELECTION OF OFFEROR. (a) The governmental
 10-14 entity shall select the offeror that submits the proposal that
 10-15 offers the best value for the governmental entity based on the
 10-16 published selection criteria and on its ranking evaluation.

10-17 (b) The governmental entity shall first attempt to
 10-18 negotiate a contract with the selected offeror.

10-19 (c) If the governmental entity is unable to negotiate a
 10-20 satisfactory contract with the selected offeror, the governmental
 10-21 entity shall, formally and in writing, end negotiations with that
 10-22 offeror and proceed to negotiate with the next offeror in the order
 10-23 of the selection ranking until a contract is reached or
 10-24 negotiations with all ranked offerors end.

10-25 (d) Not later than the seventh day after the date the
 10-26 contract is awarded, the governmental entity shall make the
 10-27 rankings determined under Section 2264.253(g) public.

10-28 Sec. 2264.255. PERFORMANCE OF WORK. (a) A construction
 10-29 manager-at-risk shall publicly advertise for bids or proposals and
 10-30 receive bids or proposals from trade contractors or subcontractors
 10-31 for the performance of all major elements of the work other than the
 10-32 minor work that may be included in the general conditions.

10-33 (b) A construction manager-at-risk may seek to perform
 10-34 portions of the work itself if:

10-35 (1) the construction manager-at-risk submits its bid
 10-36 or proposal for those portions of the work in the same manner as all
 10-37 other trade contractors or subcontractors; and

10-38 (2) the governmental entity determines that the
 10-39 construction manager-at-risk's bid or proposal provides the best
 10-40 value for the governmental entity.

10-41 Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS. (a) The
 10-42 construction manager-at-risk shall review all trade contractor or
 10-43 subcontractor bids or proposals in a manner that does not disclose
 10-44 the contents of the bid or proposal during the selection process to
 10-45 a person not employed by the construction manager-at-risk,
 10-46 architect, engineer, or governmental entity. All bids or proposals
 10-47 shall be made available to the governmental entity on request and to
 10-48 the public after the later of the award of the contract or the
 10-49 seventh day after the date of final selection of bids or proposals.

10-50 (b) If the construction manager-at-risk reviews, evaluates,
 10-51 and recommends to the governmental entity a bid or proposal from a
 10-52 trade contractor or subcontractor but the governmental entity
 10-53 requires another bid or proposal to be accepted, the governmental
 10-54 entity shall compensate the construction manager-at-risk by a
 10-55 change in price, time, or guaranteed maximum cost for any
 10-56 additional cost and risk that the construction manager-at-risk
 10-57 incurs because of the governmental entity's requirement that
 10-58 another bid or proposal be accepted.

10-59 Sec. 2264.257. DEFAULT; PERFORMANCE OF WORK. If a selected
 10-60 trade contractor or subcontractor defaults in the performance of
 10-61 its work or fails to execute a subcontract after being selected in
 10-62 accordance with this subchapter, the construction manager-at-risk
 10-63 may itself fulfill, without advertising, the contract requirements
 10-64 or select a replacement trade contractor or subcontractor to
 10-65 fulfill the contract requirements.

10-66 Sec. 2264.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed
 10-67 contract amount or guaranteed maximum price has not been determined
 10-68 at the time the contract is awarded, the penal sums of the
 10-69 performance and payment bonds delivered to the governmental entity

11-1 must each be in an amount equal to the construction budget, as
 11-2 specified in the request for proposals or qualifications.

11-3 (b) The construction manager-at-risk shall deliver the
 11-4 bonds not later than the 10th day after the date the construction
 11-5 manager-at-risk executes the contract unless the construction
 11-6 manager-at-risk furnishes a bid bond or other financial security
 11-7 acceptable to the governmental entity to ensure that the
 11-8 construction manager will furnish the required performance and
 11-9 payment bonds when a guaranteed maximum price is established.

11-10 [Sections 2264.259-2264.300 reserved for expansion]

11-11 SUBCHAPTER G. DESIGN-BUILD METHOD

11-12 Sec. 2264.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In
 11-13 this chapter, "design-build" is a project delivery method by which
 11-14 a governmental entity contracts with a single entity to provide
 11-15 both design and construction services for the construction,
 11-16 rehabilitation, alteration, or repair of a facility.

11-17 Sec. 2264.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
 11-18 EXCEPTIONS. This subchapter applies only to a facility that is a
 11-19 building or an associated structure, including an electric utility
 11-20 structure. This subchapter does not apply to:

11-21 (1) a highway, road, street, bridge, underground
 11-22 utility, water supply project, water plant, wastewater plant, water
 11-23 and wastewater distribution or conveyance facility, wharf, dock,
 11-24 airport runway or taxiway, drainage project, or related type of
 11-25 project associated with civil engineering construction; or

11-26 (2) a building or structure that is incidental to a
 11-27 project that is primarily a civil engineering construction project.

11-28 Sec. 2264.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
 11-29 governmental entity may use the design-build method for the
 11-30 construction, rehabilitation, alteration, or repair of a building
 11-31 or associated structure only as provided by this subchapter. In
 11-32 using that method, the governmental entity shall enter into a
 11-33 single contract with a design-build firm for the design and
 11-34 construction of the building or associated structure.

11-35 Sec. 2264.304. DESIGN-BUILD FIRMS. A design-build firm
 11-36 under this subchapter must be a sole proprietorship, partnership,
 11-37 corporation, or other legal entity or team that includes an
 11-38 architect or engineer and a construction contractor.

11-39 Sec. 2264.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT
 11-40 REPRESENTATIVE. The governmental entity shall select or designate
 11-41 an architect or engineer independent of the design-build firm to
 11-42 act as the governmental entity's representative for the duration of
 11-43 the project.

11-44 Sec. 2264.306. PREPARATION OF REQUEST. (a) The
 11-45 governmental entity shall prepare a request for qualifications that
 11-46 includes general information on the project site, project scope,
 11-47 budget, special systems, selection criteria and the weighted value
 11-48 for each criterion, and other information that may assist potential
 11-49 design-build firms in submitting proposals for the project.

11-50 (b) The governmental entity shall also prepare the design
 11-51 criteria package that includes more detailed information on the
 11-52 project. If the preparation of the design criteria package
 11-53 requires architectural or engineering services that constitute the
 11-54 practice of architecture within the meaning of Chapter 1051,
 11-55 Occupations Code, or the practice of engineering within the meaning
 11-56 of Chapter 1001, Occupations Code, those services shall be provided
 11-57 in accordance with the applicable law.

11-58 (c) The design criteria package must include a set of
 11-59 documents that provides sufficient information, including criteria
 11-60 for selection, to permit a design-build firm to prepare a response
 11-61 to the governmental entity's request for qualifications and to
 11-62 provide any additional information requested. The design criteria
 11-63 package must specify criteria the governmental entity considers
 11-64 necessary to describe the project and may include, as appropriate,
 11-65 the legal description of the site, survey information concerning
 11-66 the site, interior space requirements, special material
 11-67 requirements, material quality standards, conceptual criteria for
 11-68 the project, special equipment requirements, cost or budget
 11-69 estimates, time schedules, quality assurance and quality control

12-1 requirements, site development requirements, applicable codes and
 12-2 ordinances, provisions for utilities, parking requirements, and
 12-3 any other requirement.

12-4 (d) The governmental entity may not require offerors to
 12-5 submit detailed architectural or engineering designs as part of a
 12-6 proposal or a response to a request for qualifications.

12-7 Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For
 12-8 each design-build firm that responded to the request for
 12-9 qualifications, the governmental entity shall evaluate the firm's
 12-10 experience, technical competence, and capability to perform, the
 12-11 past performance of the firm and members of the firm, and other
 12-12 appropriate factors submitted by the firm in response to the
 12-13 request for qualifications, except that cost-related or
 12-14 price-related evaluation factors are not permitted.

12-15 (b) Each firm must certify to the governmental entity that
 12-16 each architect or engineer that is a member of the firm was selected
 12-17 based on demonstrated competence and qualifications, in the manner
 12-18 provided by Section 2254.004.

12-19 (c) The governmental entity shall qualify a maximum of five
 12-20 responders to submit proposals that contain additional information
 12-21 and, if the governmental entity chooses, to interview for final
 12-22 selection.

12-23 (d) The governmental entity shall evaluate the additional
 12-24 information submitted by the offerors on the basis of the selection
 12-25 criteria stated in the request for qualifications and the results
 12-26 of any interview.

12-27 (e) The governmental entity may request additional
 12-28 information regarding demonstrated competence and qualifications,
 12-29 considerations of the safety and long-term durability of the
 12-30 project, the feasibility of implementing the project as proposed,
 12-31 the ability of the offeror to meet schedules, or costing
 12-32 methodology. As used in this subsection, "costing methodology"
 12-33 means an offeror's policies on subcontractor markup, definition of
 12-34 general conditions, range of cost for general conditions, policies
 12-35 on retainage, policies on contingencies, discount for prompt
 12-36 payment, and expected staffing for administrative duties. The term
 12-37 does not include a guaranteed maximum price or bid for overall
 12-38 design or construction.

12-39 (f) The governmental entity shall rank each proposal
 12-40 submitted on the basis of the criteria set forth in the request for
 12-41 qualifications.

12-42 Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
 12-43 governmental entity shall select the design-build firm that submits
 12-44 the proposal offering the best value for the governmental entity on
 12-45 the basis of the published selection criteria and on its ranking
 12-46 evaluations.

12-47 (b) The governmental entity shall first attempt to
 12-48 negotiate a contract with the selected firm.

12-49 (c) If the governmental entity is unable to negotiate a
 12-50 satisfactory contract with the selected firm, the governmental
 12-51 entity shall, formally and in writing, end all negotiations with
 12-52 that firm and proceed to negotiate with the next firm in the order
 12-53 of the selection ranking until a contract is reached or
 12-54 negotiations with all ranked firms end.

12-55 (d) Not later than the seventh day after the date the
 12-56 contract is awarded, the governmental entity shall make the
 12-57 rankings determined under Section 2264.307(f) public.

12-58 Sec. 2264.309. SUBMISSION OF DESIGN AFTER SELECTION. After
 12-59 selection of the design-build firm, that firm's architects or
 12-60 engineers shall submit all design elements for review and
 12-61 determination of scope compliance to the governmental entity or the
 12-62 governmental entity's architect or engineer before or concurrently
 12-63 with construction.

12-64 Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The
 12-65 design-build firm shall supply a set of construction documents for
 12-66 the completed project to the governmental entity at the conclusion
 12-67 of construction. The documents must note any changes made during
 12-68 construction.

12-69 Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment

13-1 or performance bond is not required and may not provide coverage for
 13-2 the design portion of the design-build contract with the
 13-3 design-build firm under this subchapter.

13-4 (b) If a fixed contract amount or guaranteed maximum price
 13-5 has not been determined at the time the design-build contract is
 13-6 awarded, the penal sums of the performance and payment bonds
 13-7 delivered to the governmental entity must each be in an amount equal
 13-8 to the construction budget, as specified in the design criteria
 13-9 package.

13-10 (c) The design-build firm shall deliver the bonds not later
 13-11 than the 10th day after the date the design-build firm executes the
 13-12 contract unless the design-build firm furnishes a bid bond or other
 13-13 financial security acceptable to the governmental entity to ensure
 13-14 that the design-build firm will furnish the required performance
 13-15 and payment bonds before construction begins.

13-16 [Sections 2264.312-2264.350 reserved for expansion]

13-17 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

13-18 Sec. 2264.351. JOB ORDER CONTRACTING. In this chapter,
 13-19 "job order contracting" is a procurement method used for
 13-20 maintenance, repair, alteration, renovation, remediation, or minor
 13-21 construction of a facility when the work is of a recurring nature
 13-22 but the delivery times, type, and quantities of work required are
 13-23 indefinite.

13-24 Sec. 2264.352. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
 13-25 EXCEPTIONS. (a) This subchapter applies only to a facility that is
 13-26 a building, the design and construction of which is governed by
 13-27 accepted building codes, or a structure or land, whether improved
 13-28 or unimproved, that is associated with a building. This subchapter
 13-29 does not apply to:

13-30 (1) a highway, road, street, bridge, utility, water
 13-31 supply project, water plant, wastewater plant, water and wastewater
 13-32 distribution or conveyance facility, wharf, dock, airport runway or
 13-33 taxiway, drainage project, or related type of project associated
 13-34 with civil engineering construction; or

13-35 (2) a building or structure that is incidental to a
 13-36 project that is primarily a civil engineering construction project.

13-37 (b) This subchapter does not prohibit the:

13-38 (1) procurement of commercial unitary and applied
 13-39 heating, ventilation, and air conditioning (HVAC) equipment,
 13-40 parts, and associated services, including temporary cooling
 13-41 services, to complete the maintenance, repair, alteration,
 13-42 renovation, remediation, or construction of a facility; or

13-43 (2) prepurchase of HVAC equipment and commissioning
 13-44 services through an interlocal contract.

13-45 Sec. 2264.353. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR
 13-46 FACILITIES. (a) A governmental entity may award job order
 13-47 contracts for the maintenance, repair, alteration, renovation,
 13-48 remediation, or minor construction of a facility if:

13-49 (1) the work is of a recurring nature but the delivery
 13-50 times are indefinite; and

13-51 (2) indefinite quantities and orders are awarded
 13-52 substantially on the basis of predescribed and prepriced tasks.

13-53 (b) The governmental entity shall establish the maximum
 13-54 aggregate contract price when it advertises the proposal.

13-55 (c) The governing body of a governmental entity shall
 13-56 approve each job order that exceeds:

13-57 (1) \$500,000 under the contract; or

13-58 (2) a lesser amount as established by the governing
 13-59 body.

13-60 Sec. 2264.354. CONTRACTUAL UNIT PRICES. The governmental
 13-61 entity may establish contractual unit prices for a job order
 13-62 contract by:

13-63 (1) specifying one or more published construction unit
 13-64 price books and the applicable divisions or line items; or

13-65 (2) providing a list of work items and requiring the
 13-66 offerors to propose one or more coefficients or multipliers to be
 13-67 applied to the price book or prepriced work items as the price
 13-68 proposal.

13-69 Sec. 2264.355. COMPETITIVE SEALED PROPOSAL METHOD. (a) A

14-1 governmental entity may use the competitive sealed proposal method
 14-2 under Subchapter D for job order contracts.

14-3 (b) The governmental entity shall advertise for, receive,
 14-4 and publicly open sealed proposals for job order contracts.

14-5 (c) The governmental entity may require offerors to submit
 14-6 information in addition to rates, including experience, past
 14-7 performance, and proposed personnel and methodology.

14-8 Sec. 2264.356. AWARDING OF JOB ORDER CONTRACTS. The
 14-9 governmental entity may award job order contracts to one or more job
 14-10 order contractors in connection with each solicitation of
 14-11 proposals.

14-12 Sec. 2264.357. USE OF JOB ORDER CONTRACT. A job order
 14-13 contract may be used to accomplish work only for the governmental
 14-14 entity that awards the contract unless:

14-15 (1) the solicitation for the job order contract and
 14-16 the contract specifically provide for use by other persons; or

14-17 (2) the governmental entity enters into an interlocal
 14-18 agreement that provides otherwise.

14-19 Sec. 2264.358. USE OF ARCHITECT OR ENGINEER. If a job order
 14-20 contract or an order issued under the contract requires
 14-21 architectural or engineering services that constitute the practice
 14-22 of architecture within the meaning of Chapter 1051, Occupations
 14-23 Code, or the practice of engineering within the meaning of Chapter
 14-24 1001, Occupations Code, the governmental entity shall select or
 14-25 designate an architect or engineer to prepare the construction
 14-26 documents for the project.

14-27 Sec. 2264.359. JOB ORDER CONTRACT TERM. The base term for a
 14-28 job order contract may not exceed two years. The governmental
 14-29 entity may renew the contract annually for not more than three
 14-30 additional years.

14-31 Sec. 2264.360. JOB ORDERS. (a) An order for a job or
 14-32 project under a job order contract must be signed by the
 14-33 governmental entity's representative and the contractor.

14-34 (b) The order may be:

14-35 (1) a fixed price, lump-sum contract based
 14-36 substantially on contractual unit pricing applied to estimated
 14-37 quantities; or

14-38 (2) a unit price order based on the quantities and line
 14-39 items delivered.

14-40 Sec. 2264.361. PAYMENT AND PERFORMANCE BONDS. The
 14-41 contractor shall provide payment and performance bonds, if required
 14-42 by law, based on the amount or estimated amount of any order.

14-43 [Sections 2264.362-2264.400 reserved for expansion]

14-44 SUBCHAPTER I. ENFORCEMENT

14-45 Sec. 2264.401. VOID CONTRACT. (a) A contract, including a
 14-46 job order, entered into in violation of this chapter and any bonds
 14-47 issued in connection with the contract are voidable as against
 14-48 public policy.

14-49 (b) An action to void a contract under this section does not
 14-50 excuse the obligation of the governmental entity to pay for any
 14-51 service performed or material delivered in good faith by a
 14-52 contractor, architect, engineer, design-builder, or construction
 14-53 manager before the date on which the contract is determined to be
 14-54 void.

14-55 Sec. 2264.402. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
 14-56 chapter may be enforced through an action for declaratory or
 14-57 injunctive relief filed not later than the 10th day after the date
 14-58 on which the contract is awarded.

14-59 (b) This section does not apply to enforcement of a contract
 14-60 entered into by a state agency. In this subsection, "state agency"
 14-61 has the meaning assigned by Section 2151.002. The term includes the
 14-62 Texas Building and Procurement Commission.

14-63 SECTION 2.11. Section 252.048, Local Government Code, is
 14-64 amended by adding Subsection (c-1) to read as follows:

14-65 (c-1) If a change order for a public works contract in a
 14-66 municipality with a population of 500,000 or more involves a
 14-67 decrease or an increase of \$100,000 or less, or a lesser amount as
 14-68 provided by ordinance, the governing body of the municipality may
 14-69 grant general authority to an administrative official of the

15-1 municipality to approve the change order.

15-2 SECTION 2.12. Section 271.054, Local Government Code, is
15-3 amended to read as follows:

15-4 Sec. 271.054. COMPETITIVE BIDDING REQUIREMENT. Before the
15-5 governing body of an issuer may enter into a contract requiring an
15-6 expenditure by or imposing an obligation or liability on the
15-7 issuer, or on a subdivision of the issuer if the issuer is a county,
15-8 of more than \$25,000, the governing body must:

15-9 (1) submit the proposed contract to competitive
15-10 bidding; or

15-11 (2) use an alternate method of project delivery
15-12 authorized by Chapter 2264, Government Code.

15-13 SECTION 2.13. Section 271.060, Local Government Code, is
15-14 amended by amending Subsection (b) and adding Subsection (c) to
15-15 read as follows:

15-16 (b) The total price of a contract may not be increased by a
15-17 change order unless provision has been made for the payment of the
15-18 added cost by the appropriation of current funds or bond funds for
15-19 that purpose, by the authorization of the issuance of certificates,
15-20 or by a combination of those procedures.

15-21 (c) A contract with an [The] original contract price of \$1
15-22 million or more may not be increased by more than 25 percent. If a
15-23 change order for a contract with an original contract price of less
15-24 than \$1 million increases the contract amount to \$1 million or more,
15-25 subsequent change orders may not increase the revised contract
15-26 amount by more than 25 percent. [The original price may not be
15-27 decreased by more than 25 percent without the consent of the
15-28 contractor.]

15-29 SECTION 2.14. Section 431.101(g), Transportation Code, is
15-30 amended to read as follows:

15-31 (g) A local government corporation [~~created by a navigation~~
15-32 ~~district~~] must comply with all state law related to the design and
15-33 construction of projects, including the procurement of design and
15-34 construction services, that applies to the local government
15-35 [navigation district] that created the corporation.

15-36 SECTION 2.15. Subchapter D, Chapter 431, Transportation
15-37 Code, is amended by adding Section 431.110 to read as follows:

15-38 Sec. 431.110. COMPETITIVE BIDDING EXCEPTION FOR CERTAIN
15-39 IMPROVEMENTS. Any competitive bidding requirement or restriction
15-40 on a local government that created a local government corporation
15-41 does not apply to an expenditure by the local government
15-42 corporation for:

15-43 (1) an improvement:
15-44 (A) that is constructed in a reinvestment zone;
15-45 and

15-46 (B) the construction of which is managed by a
15-47 private venture participant; or

15-48 (2) an improvement constructed by the corporation for
15-49 which more than 50 percent of the construction is funded by a
15-50 private entity.

15-51 ARTICLE 3. ADDITIONAL EXEMPTIONS

15-52 SECTION 3.01. Section 44.901, Education Code, is amended by
15-53 adding Subsection (j) to read as follows:

15-54 (j) Chapter 2264, Government Code, does not apply to this
15-55 section.

15-56 SECTION 3.02. Section 51.927, Education Code, is amended by
15-57 adding Subsection (k) to read as follows:

15-58 (k) Chapter 2264, Government Code, does not apply to this
15-59 section.

15-60 SECTION 3.03. Section 2166.406, Government Code, is amended
15-61 by adding Subsection (k) to read as follows:

15-62 (k) Chapter 2264 does not apply to this section.

15-63 SECTION 3.04. Chapter 302, Local Government Code, is
15-64 amended by adding Section 302.006 to read as follows:

15-65 Sec. 302.006. EXEMPTION FROM OTHER CONTRACTING LAW.
15-66 Chapter 2264, Government Code, does not apply to this chapter.

15-67 SECTION 3.05. Subchapter E, Chapter 335, Local Government
15-68 Code, is amended by adding Section 335.077 to read as follows:

15-69 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.

Chapter 2264, Government Code, does not apply to this chapter.

SECTION 3.06. Section 22.084, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) Chapter 2264, Government Code, does not apply to an agreement entered into under this section.

SECTION 3.07. Section 370.305, Transportation Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) Chapter 2264, Government Code, does not apply to agreements entered into pursuant to this section.

SECTION 3.08. Subchapter Q, Chapter 451, Transportation Code, is amended by adding Section 451.8025 to read as follows:

Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter 2264, Government Code, does not apply to this subchapter.

SECTION 3.09. Subchapter C, Chapter 452, Transportation Code, is amended by adding Section 452.1095 to read as follows:

Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR CERTAIN AUTHORITIES. Chapter 2264, Government Code, does not apply to an authority consisting of one subregion governed by a subregional board created under Subchapter O.

SECTION 3.10. Section 60.452, Water Code, is amended by adding Subsection (c) to read as follows:

(c) Chapter 2264, Government Code, does not apply to this subchapter.

ARTICLE 4. CONFORMING AMENDMENT

SECTION 4.01. Section 252.021(a), Local Government Code, is amended to read as follows:

(a) Before a municipality may enter into a contract that requires an expenditure of more than \$25,000 from one or more municipal funds, the municipality must:

(1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals;

(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or

(3) comply with a method described by Chapter 2264, Government Code [~~Subchapter H, Chapter 271~~].

ARTICLE 5. REPEALER

SECTION 5.01. (a) The following are repealed:

(1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038, 44.039, 44.040, and 44.041, Education Code;

(2) Sections 2166.2511, 2166.2526, 2166.2531, 2166.2532, 2166.2533, and 2166.2535, Government Code;

(3) Section 252.043(d-1), Local Government Code;

(4) Subchapter H, Chapter 271, Local Government Code; and

(5) Section 431.101(e), Transportation Code.

(b) Section 1, Chapter 359, Acts of the 78th Legislature, Regular Session, 2003, and any provision enacted by Section 1 of that chapter are repealed.

ARTICLE 6. TRANSITION; EFFECTIVE DATE

SECTION 6.01. (a) The changes in law made by this Act apply only to a contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.

(b) A contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 6.02. This Act takes effect September 1, 2007.

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